

# House Study Bill 157 - Introduced

SENATE/HOUSE FILE \_\_\_\_\_  
BY (PROPOSED DEPARTMENT OF  
PUBLIC DEFENSE BILL)

## A BILL FOR

1 An Act relating to service in the national guard and reserve  
2 components of the armed forces, including applicability of  
3 reemployment protections, and military justice jurisdiction  
4 and statutes of limitation.  
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 29A.43, Code 2017, is amended by adding  
2 the following new subsection:

3 NEW SUBSECTION. 4. The protections provided for in this  
4 section shall apply with equal force to members of the national  
5 guard of another state, an organized reserve unit in another  
6 state, or a civil air patrol unit in another state who are  
7 employed in this state.

8 Sec. 2. Section 29B.1, Code 2017, is amended to read as  
9 follows:

10 **29B.1 Persons subject to code.**

11 1. This chapter applies to all members of the state military  
12 forces performing national guard duty or state active duty,  
13 while not on federal active duty. In addition, this chapter  
14 applies to all members of the state military forces who commit  
15 an offense during travel to or from the member's duty location  
16 or during intervals between consecutive periods of duty on the  
17 same day or on consecutive days in which the victim of the  
18 offense is another member of the state military forces.

19 2. As used in this chapter, unless the context otherwise  
20 requires, "*state military forces*" has the same meaning as in  
21 section 29A.6, and "*code*" means this chapter, which may be cited  
22 as the "*Iowa Code of Military Justice*".

23 Sec. 3. Section 29B.2, Code 2017, is amended to read as  
24 follows:

25 **29B.2 Jurisdiction to try personnel.**

26 1. Each person discharged from the state military forces  
27 who is later charged with having fraudulently obtained a  
28 discharge is, subject to section 29B.44, subject to trial by  
29 court-martial on that charge and is after apprehension subject  
30 to this code while in the custody of the military for that  
31 trial. Upon conviction of that charge the person is subject  
32 to trial by court-martial for all offenses under this code  
33 committed before the fraudulent discharge.

34 2. No person who has deserted from the state military  
35 forces may be relieved from amenability to the jurisdiction of

1 this code by virtue of a separation from any later period of  
2 service.

3 3. ~~A member of the state military forces~~ person who  
4 is charged with having committed an offense against this  
5 code may be called or ordered to duty for the purpose of  
6 investigation under section 29B.33, trial by court-martial, and  
7 or nonjudicial punishment under section 29B.14. ~~A member shall~~  
8 ~~be called or ordered to duty within one hundred eighty days of~~  
9 ~~the discovery of the charged offense, and in no event shall a~~  
10 ~~member be called or ordered to duty after the expiration of~~  
11 ~~three years from the termination of a period of duty.~~

12 4. A member of the state military forces who is subject  
13 to this code at the time of commission of an offense made  
14 punishable by this code is not relieved from amenability to  
15 the jurisdiction of this code by virtue of the termination of  
16 a period of duty.

17 Sec. 4. Section 29B.44, Code 2017, is amended to read as  
18 follows:

19 **29B.44 Statute of limitations.**

20 1. A person charged with desertion or absence without leave  
21 in time of war, or with aiding the enemy or with mutiny, may be  
22 tried and punished at any time without limitation.

23 2. Except as otherwise provided in this section, a person  
24 charged with desertion in time of peace or with the any other  
25 offense punishable under section 29B.112 under this code is  
26 not liable to be tried by court-martial if the offense was  
27 committed more than ~~three~~ five years before the receipt of  
28 sworn charges and specifications by an officer exercising  
29 summary court-martial jurisdiction over the command.

30 3. Except as otherwise provided in this section, a person  
31 charged with any offense under this code is not liable to be  
32 ~~tried by court-martial or punished under section 29B.14~~ if the  
33 offense was committed more than two years before the receipt  
34 ~~of sworn charges and specifications by an officer exercising~~  
35 ~~summary court-martial jurisdiction over the command or before~~

1 ~~the~~ imposition of punishment under section 29B.14.

2 4. Periods in which the accused was absent from territory  
3 in which the state has the authority to apprehend the accused,  
4 or in the custody of civil authorities, or in the hands of the  
5 enemy, shall be excluded in computing the period of limitation  
6 prescribed in this section.

7 5. If charges or specifications are dismissed as defective  
8 or insufficient for any cause and the period prescribed by the  
9 applicable statute of limitations has expired or will expire  
10 within one hundred eighty days after the date the charges  
11 or specifications are dismissed, trial by court-martial or  
12 punishment under section 29B.14 is not barred by the statute of  
13 limitations if the following conditions are met:

14 a. The charges and specifications are received by an officer  
15 exercising summary court-martial jurisdiction or having the  
16 authority to conduct punishment under section 29B.14 within one  
17 hundred eighty days after the charges or specifications are  
18 dismissed.

19 b. The charges and specifications allege some or all of  
20 the same acts or omissions that were alleged in the dismissed  
21 charges or specifications.

22 EXPLANATION

23 The inclusion of this explanation does not constitute agreement with  
24 the explanation's substance by the members of the general assembly.

25 This bill concerns the department of public defense relating  
26 to provisions under Code chapter 29A, the military code, and  
27 Code chapter 29B, the Iowa code of military justice.

28 Code section 29A.43 is amended to provide that members  
29 of the national guard of another state or a military reserve  
30 unit in another state who are employed in this state have the  
31 same protections regarding nondiscrimination and reemployment  
32 rights, including continuation of health coverage, as members  
33 of the Iowa national guard.

34 Code section 29B.1, concerning persons subject to the Iowa  
35 code of military justice, is amended to specifically provide

1 that the code applies to members of the state military forces  
2 when they are performing national guard duty or state active  
3 duty. In addition, Code section 29B.1 is amended to provide  
4 that a military offense committed by one member of the state  
5 military forces during travel to or from the member's duty  
6 location or during intervals between consecutive periods of  
7 duty on the same day or on consecutive days against another  
8 member of the state military forces, and there is a direct  
9 relationship between the offense and the military membership,  
10 is also subject to state military criminal jurisdiction.

11 Code section 29B.2, concerning jurisdiction to try  
12 personnel, is amended by striking a provision prohibiting  
13 a member of the state military forces from being called or  
14 ordered to duty after the expiration of three years from the  
15 termination of a period of duty relating to a member who is  
16 charged with having committed an offense against the Iowa code  
17 of military justice.

18 Code section 29B.44, concerning the statute of limitations  
19 under the Iowa code of military justice, is amended. The  
20 bill provides that, unless otherwise provided by Code section  
21 29B.44, the statute of limitations for charging a person with  
22 desertion in time of peace or any other offense under the code  
23 subject to trial by court-martial is five years. Current law  
24 provides that the statute of limitations is three years for  
25 charging a person with desertion in time of peace or perjury  
26 and two years for charging a person for any other offense of  
27 the code subject to trial by court-martial. In addition, the  
28 bill provides that dismissed military criminal charges may be  
29 refiled within 180 days of dismissal.